United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

U.S. COURT OF APPEALS
FOR THE SECOND CIRCUIT

St. Francis Hospital,
Plaintiff-Appellee,

-against-

Conn. ALRB and NLRB,
Defendants,

-and-

District 1199, etc.,
Defendant-Appellant

APPENDIX ON BEHALF OF APPELLANT

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

- x

ST. FRANCIS HOSPITAL

v.

CONNECTICUT STATE BOARD OF LABOR RELATIONS, DISTRICT 1199 NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, RWDSU, AFL-CIO, and NATIONAL LABOR RELATIONS BOARD

Civil No. H-74-344

NOTICE OF APPEAL

- x

Notice is hereby given that District 1199 National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO, a defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the order of the Honorable M. Joseph Blumenfeld, U. S. District Judge for the District of Connecticut granting a preliminary injunction entered in this action on the 1st day of November, 1974.

Dated: New York, New York

November 2, 197

SIPSER, WEINSTOCK, HARPER & DORN
Attorneys for District 1199
380 Madison Avenue
New York, New York 10017

In the

UNITED STATES COURT OF APPEALS
for the Second Circuit

No.

ST. FRANCIS HOSPITAL,

Plaintiff-Appellee,

-against-

CONNECTICUT STATE BOARD OF LABOR RELATIONS and NATIONAL LABOR RELATIONS BOARD,

Defendants,

-and-

DISTRICT 1199 NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, RWDSU, AFL-CIO,

Defendant-Appellant.

APPENDIX ON BEHALF OF APPELLANT DISTRICT 1199 NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, RWDSU, AFL-CIO

Appeal from the Order of the United States District Court for the District of Connecticut, No. H-74-344

SEGLER, WHINSTON, HARPER & DORN
Attorneys for Appellant
380 Madison Avenue
New York, New York 10017

LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

EXH D

In the matter of	:	
ST. FRANCIS HOSPITAL	:	
(Employer)		
-and-	:	Case No. E-2847
		E- 2848
DISTRICT 1199 NATIONAL UNION OF HOSPITAL & HEALTH CARE EMPLOYEES RWDSU, AFL-CIO	:	E- 2849
	:	
(Petitioner)	:	

AGREEMENT FOR CONSENT ELECTION

AGREEMENT between the Employer and the Petitioner above named, dated July 25, 1974

Wherein it is mutually agreed as follows:

1. The Employer and the Petitioner mutually agree that a question or controversy has arisen concerning the representation of the employees of the Employer, within the meaning of Section 31-106 of the Connecticut State Labor Relations Act, hereinafter called the Act.

2. The Employer and the Petitioner mutually agree to dispense with a public hearing on the issues raised by the petition for investigation and certification of representative filed in this matter on June 17, 1974

3. The Employer and the Petitioner mutually agree that the following groups or classifications of employees of the Employer constitute a unit appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours, or other conditions of employment, within the meaning of Section 31-106 of the Act:

> All of the hourly-paid employees in the dietary, housekeeping and laundry departments of the Hospital who regularly work an average of twenty (20) hours or more per week, but excluding watchmen, guards, licensed practical nurses, registered nurses and other professional employees, clerical and technical employees, temporary employees, trainees, supervisors within the meaning of the Connecticut Labor Relations Act, religious, part-time employees working less than twenty (20) hours per week, and all other employees.

4. The Employer and the Petitioner mutually agree that the employees within the described unit who were in the employ of the Employer on June 17, 1974
and who are employees at the time of the election, shall be eligible to vote in the election hereinafter agreed upon.

5. The Employer and the Petitioner mutually agree and consent to the conducting of an election by secret ballot by the Connecticut State Board of Labor Relations, hereinafter called the Board, among the eligible employees as set forth in Paragraph 4 above, within the unit defined in Paragraph 3 above, said election to be held in conformity with the provisions of the Act, and the rules, regulations and decisions of the Board.

6. The election shall be held on Wednesday, September 11, 1974, from 6:00 a.m. until 9:00 a.m., and from 2:00 p.m. until 4:00 p.m., at St. Francis Hospital, 114 Woodland Street, Hartford, Connecticut.

7. The sole question to be voted on at the election shall be: Do you desire to be represented for the purposes of collective bargaining by:

District 1199 National Union of Hospital & Health Care Employees RWDSU, AFL-CIO

8. The Employer agrees to post conspicuously, at a place customarily resorted to by all employees, at least 24 hours prior to the election, a copy of the notice of election, sample ballot and list of eligible employees, in order to permit any person improperly omitted from the list to complain thereof to the Board, and to permit notification to the Board of the inclusion of any person eligible to vote.

9. The Petitioner and the Employer shall have the right to challenge persons seeking to vote as to their identity or eligibility and all questions arising therefrom shall be decided by the Board.

10. The votes shall be counted and tallied by an agent of the Board, but the Petitioner and the Employer shall be allowed to station three observer(s) each at the polling place during such election for the purpose of checking voters, challenging voters, and to witness the counting of the ballots. These observers shall be designated by the respective parties, subject to approval of the Board.

11. The Employer and the Petitioner agree to be guided and to abide by all rulings of the Board's agent on any questions raised relating to the conduct of the election, but such rulings may be reviewed by the Board upon application of the appropriate regulation, by the Employer and/or the Petitioner.

12. The Employer and the Petitioner mutually agree that if a majority of the eligible persons voting in said election shall indicate their desire to be represented by the Petitioner for the purposes of collective bargaining, the Board may certify that the Petitioner has been duly designated by the majority of the employees within the said unit as their representative for the purposes of collective bargaining, and is the exclusive representative of all of the employees in the said unit, within the meaning of Section 31-106 of the Act.

13. The Employer agrees that in the event of such certification by the Board, it will recognize the Petitioner as the representative of all its employees within the said unit, and bargain with it for the purposes of collective bargaining.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed on the day and year first-above written.

Sister Frances Marie, Administrator
For the Employer

Irene O'Brien V.P.
For the Petitioner

WITNESSED:

For the Board

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STATE OF CONNECTICUT

LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

In the Matter of		
ST. FRANCIS HOSPITAL (Employer)		
and		Case Nos. E-2847 E-2848 E-2849
DISTRICT 1199 NATIONAL UNION OF HOSPITAL & HEALTH CARE EMPLOYEES RWDSU, AFL-CIO (Petitioner)		

MOTION TO DISMISS PROCEEDINGS
FOR LACK OF JURISDICTION

The Employer hereby moves the Connecticut State Board of Labor Relations (State Board) to dismiss the above entitled proceeding and the election thereunder, scheduled to be held on September 11, 1974, for lack of present jurisdiction in the State Board by reason of the following:

1. The 1974 Non Profit Hospital Amendments to the National Labor Relations Act, Public Law 93-360, which became effective on August 25, 1974, extended the coverage of the National Labor Relations Act to employees of non-profit health care institutions.

2. St. Francis Hospital is a non-profit health care institution within the scope and meaning of said Amendments to the National Labor Relations Act.

3. Said Amendments to the National Labor Relations Act confer exclusive, preemptive jurisdiction over the subject matter of this proceeding upon the National Labor Relations Board, effective on and after August 25, 1974.

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4. A Representation Petition with respect to employees of the Employer can be filed at any time with the National Labor Relations Board which clearly is vested under said Amendments to the National Labor Relations Act with jurisdiction to determine any matters or questions arising under such Petition.

Dated at Hartford, Connecticut, the 4th day of September, 1974.

SAINT FRANCIS HOSPITAL

By _____
William M. Cullina
Its Attorney

Of counsel:

Murtha, Cullina, Richter and Pinney
P. O. Box 3197 - 101 Pearl Street
Hartford, Connecticut 06103

PROOF OF SERVICE

I hereby certify that service of a copy of the foregoing Motion to Dismiss was made upon District 1199, National Union of Hospital & Health Care Employees, RWDSU, AFL-CIO, by depositing the same this date in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed as follows:

District 1199, National Union of Hospital &
Health Care Employees, RWDSU, AFL-CIO
Attention: Mr. Jerome P. Brown, Vice President
152 Temple Street
New Haven, Connecticut 06510

Dated at Hartford, Connecticut, the 4th day of September, 1974.

William M. Cullina
Attorney for the Hospital

STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

In the matter of	Case Nos. E-2847 E-2848 E-2849
ST. FRANCIS HOSPITAL	
- and -	Decision No. 1252
DISTRICT 1199 NATIONAL UNION OF HOSPITAL & HEALTH CARE EMPLOYEES RWDSU, AFL-CIO	Decided: October 9, 1974 Issued: October 10, 1974

A P P E A R A N C E S:

William M. Cullina, Esq.,
for the Hospital

John A. Arcudi, Esq.,
for the Union

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the Connecticut State Board of Labor Relations by the Connecticut State Labor Relations Act, it is

DIRECTED, that as part of the determination by the Board to ascertain the exclusive representative for collective bargaining, an election by secret ballot shall be conducted within thirty (30) days of the issuance hereof under the supervision of the agent of the Board, at Hartford, Connecticut, among the employees described in the agreement for consent election employed by St. Francis Hospital on the date of the filing of the petition and on the date of the election to determine whether or not they desire to be represented by District 1199 National Union of Hospital & Health Care Employees, RWDSU, AFL-CIO.

A full discussion of the case will be issued at a later date.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

By s/ Patrick F. Bosse
Chairman

s/ Fleming James, Jr.
Member

s/ Gerald R. Lublin
Member

C

EXHIBIT C

STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

In the matter of	:	Case Nos. E-2847
	:	E-2848
ST. FRANCIS HOSPITAL	:	E-2849
	:	
- and -	:	Decision No. 1252-A
	:	
DISTRICT 1199 NATIONAL UNION OF HOSPITAL & HEALTH CARE EMPLOYEES RWDSU, AFL-CIO	:	Decided: October 9, 1974
	:	Issued: October 17, 1974

A P P E A R A N C E S:

William M. Cullina, Esq.,
for the Hospital

John A. Arcudi, Esq.,
for the Union

MEMORANDUM OF DECISION

On June 17, 1974, District 1199 National Union of Hospital & Health Care Employees, AFL-CIO, hereinafter the Union, filed with the Connecticut State Board of Labor Relations, hereinafter the Board, petitions for elections among employees of St. Francis Hospital, hereinafter the Hospital, in three separate designated units. On July 19, 1974, the Agent of the Board held a conference between the parties and after discussion a verbal agreement was reached that the units should be combined into a single unit and the Board should hold a single election to determine whether a majority of employees in that unit wish to be represented by the Union for purposes of collective bargaining with the Hospital. The Agent drafted a written consent to such an election and submitted it to the parties. The agreement contained the following language:

> "5. The employer and the Petitioner mutually agree and consent to the conducting of an election by secret ballot by the Connecticut State Board of Labor Relations, hereinafter called the Board, among the eligible employees as set forth in Paragraph 4 above, within the unit confined in Paragraph 3 above, said election to be held in conformity with the provisions of the act, and rules, regulations and decisions of the Board.
>
> "6. Elections shall be held on Wednesday, September 11, 1974, from 6:00 A.M. until 9:00 A.M. and from 2:00 P.M. until 4:00 P.M., at St. Francis Hospital, 114 Woodland Street, Hartford, Connecticut."

On July 25, 1974, the Hospital's duly authorized representative signed this agreement. It was also signed by the Union representative.

When these petitions were filed proposals were pending in Congress for an amendment to the National Labor Management Relations Act which would end the exemption of non-profit private hospitals then contained in the federal act and thus bring such hospitals within the jurisdiction of NLRB. A bill which embodied these proposals passed both houses of Congress on July 12, 1974. This bill was signed by the President on July 26, 1974, and thus was enacted into law to become effective on August 25, 1974.

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EXHIBIT E

On September 4, 1974, the Hospital filed its objection to the jurisdiction of the Board and on September 9, 1974 its confirmation of withdrawal of consent. A hearing was held on September 12th before the Board to determine the issues raised by the motion and the attempt by the Hospital to withdraw its consent.

At the hearing it appeared that the present Agent, his predecessor, and the former Assistant Agent had on a number of occasions allowed a party to a similar consent for election to withdraw from it before the election was held. In most of these instances the Agent had found good reason to relieve one party from the stipulation, such as a clear breach of it by the other party. It was suggested however that the Agents' practice had been even more liberal than that and that withdrawal had been permitted when no such reason for it existed.

It also appeared at the hearing that the members of the Board were unaware of this practice and they have been unable to find any decision wherein the Board has sanctioned such withdrawal except that in Trinity College, Case No. E-1960, Decn. No. 953 (1970), which will be discussed below.

The Union introduced evidence to show that it had assigned three of its salaried organizers to work full time on the campaign to organize employees in the unit, and had made other commitments of time and money to the same end, all in reliance on the consent to the election to be held on September 11th.

There is no question about federal preemption in this case. The Hospital will clearly fall within federal jurisdiction so far as all disputes arising after August 25th are concerned. The problem here is presented by the transitional nature of the present dispute and the lack of any clear indication of what NLRB will do about matters pending before State agencies which had undoubted jurisdiction when proceedings were instituted. This Board has written NLRB for guidance in the matter and has received an equivocal reply as to pending election proceedings.* Similar statements have been made to other agencies and in a memorandum of the general counsel to NLRB (No. 74-49) quoted in part in Judge Cannella's decision denying a hospital's request for an injunction to restrain the New York board from continuing to process an election case begun before August 25th. Methodist Hospital of Brooklyn v. N.Y. State Labor Relations Board, 74, CIV. 3754 U.S. Dist Ct S.D.N.Y.; (mem. of dec., Sept. 10, 1974). **

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* A portion of the September 6th letter to Chairman Bosse is as follows:

"Insofar as representation cases are concerned, no case has yet posed to the NLRB issues requiring interpretation of the amended provisions of the statute. Nor has the NLRB yet had the opportunity to determine whether the discretionary jurisdictional monetary standards to be applied to health-care facilities under the amended Act will vary from those previously applied. Accordingly, where no parallel or related case is pending before the NLRB, and thus the National Board does not have available to it the full record facts, the NLRB's current view is that it would not be appropriate, sua sponte, to attempt to intervene or otherwise take positions in matters pending solely before the Connecticut Board. If a parallel or related case were also to be filed with the NLRB, however, the questions thus raised would then have to be considered on a case-by-case basis in the light of the facts in each case. In this connection, the NLRB's policy has been to recognize the validity of State-conducted elections and certifications where that election procedure was free of irregularities and reflected the true desires of the employees. There, too, however, each case raising such issues before the NLRB will have to be considered on its own facts viewed in the light of the newly expressed intent of Congress."

** The quoted portion of the memorandum is as follows:

"Charges may also be filed concerning previously uncovered institutions where proceedings covering the matter are pending before a state agency. Each such case will have to be individually evaluated to ascertain the specific facts, the stage of any ongoing state proceedings and the possible prospective effects of continuation of the state proceedings."

Judge Cannella concluded that the New York board should not be restrained from holding post election hearings or certifying the Union on the basis of an election held before August 25th. On similar reasoning Judge Weinstein denied an injunction against the holding in September of an election ordered by the same board before August 25th. The Swedish Hospital in Brooklyn v. N. Y. State Labor Rel. Bd., 74 CIV. 1267 (U.S. Dist. Ct., S.D.N.Y., Sept. 4, 1974) (a situation very much like that presented here).

From the above it appears that the question of this Board's continuing jurisdiction in the present case is at least a matter of serious doubt.

In this posture of the case we regard the consent or agreement for election as decisive. And we hold that such an agreement is binding upon the parties unless there is some legally sufficient basis for one of them to be relieved from it. We believe this is the rule followed by NLRB and the federal courts. See, e.g., NLRB v. Carlton Wood Products, 201 F.2d 863, 866 (10th Cir. 1953). The Hospital suggests that this is true only where an election has already been held and that NLRB allows a party freely to withdraw from such a consent before the election. But the cases cited do not so hold. See, e.g., Lamar Hotel, 127 NLRB 885, 46 LRRM 116 (1960) cited in Hospital's brief. To be sure the national board in that case allowed a party to be relieved for cause from a stipulation but it pointed out: "Normally, the Board will not permit a party to withdraw from a stipulation." 127 NLRB at 886. See also Norris-Thermador Corp., 119 NLRB 1301 (1958).

It may be that this Board's Agent has followed a different rule but we hereby disapprove this practice to the extent that such withdrawal may have been permitted without a showing of good cause (and there is only a suggestion that this may have occurred). To be sure the Agent acts for the Board in individual cases but he is not authorized to establish Board policy by making rules having a general application. The Hospital's contention that the Board is bound for the future by the Agent's past practice must fail.

The Hospital contends that the withdrawal of jurisdiction from the Board was a supervening change which should justify withdrawal from the stipulation and it points to the decision of this Board in Trinity College, supra. We cannot, however, accept this contention. To be sure the federal act became law a day after the consent was signed but the pendency of the bill was well known by all concerned and the likelihood that it would become law with or without the President's signature must have been contemplated. If the parties wished to defer signing until after the doubt was settled or if they wished to provide in their agreement for the eventuality that federal jurisdiction would become a fact, they were free to do so. This is not a case where an unforeseen supervening event frustrates the intention of contracting parties. They must be held to have agreed with a view to the possibility of federal jurisdiction.

The reliance on Trinity College is misplaced. The consent point was not stressed or argued. Moreover it was then this Board's view that consent could not vest it with a jurisdiction that was clearly lacking. Here there is no such clear situation; the jurisdictional question is at least debatable and in such a context consent may be potent enough to preclude the consenter from raising the jurisdictional issue. Cf. Chicot County Drainage Dist. v. Baxter State Bank, 308 U.S. 371 (1940); Sherrer v. Sherrer, 334 U.S. 343 (1948); Coe v. Coe, 334 U.S. 378 (1948) (acquiescence in court's assumption of jurisdiction bars collateral attack).

Our conclusion is fortified by the fact that the Union here acted in reliance on the consent for election in a way that will prove detrimental if the Hospital is allowed to withdraw from its stipulation.

This question is by no means free from doubt. We must nevertheless decide it and we are reassured by the knowledge that if we are wrong the Hospital has ready remedies. For one thing, as Judge Cannella pointed out, it may petition NLRB for "an advisory opinion stating whether it will or will not assert its jurisdiction with respect to a matter pending before any court or any agency of the state." Methodist Hospital case, supra, p. 7, cit. NLRB Rules & Regs 102.98 - 102.114. The filing of such a

petition at this late date would not automatically work a stay of this Board's order for an election but it might provide a guide for future action after the results of the election become known.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

By s/ Patrick F. Bosse
Chairman

s/ Fleming James, Jr.
Member

s/ Gerald R. Lublin
Member

TO:

Sister Francis Marie, Administrator
St. Francis Hospital
114 Woodland Street
Hartford, Connecticut 06105

CERTIFIED
(RRR)

William M. Cullina, Esq.
101 Pearl Street
Hartford, Connecticut 06103

District 1199 National Union of
Hospital & Health Care Employees,
RWDSU, AFL-CIO
152 Temple Street
New Haven, Connecticut 06510

CERTIFIED
(RRR)

Sipser, Weinstock, Harper & Dorn
280 Madison Avenue
New York, New York 10017

John A. Arcudi, Esq.
285 Golden Hill
Bridgeport, Connecticut

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ST. FRANCIS HOSPITAL,

Plaintiff,

v.

CONNECTICUT STATE BOARD OF LABOR RELATIONS, DISTRICT 1199: NATIONAL UNION OF HOSPITAL AND: HEALTH CARE EMPLOYEES, RWDSU, AFL-CIO, and NATIONAL LABOR RELATIONS BOARD,

Defendants.

ORDER

Civil Action No. H 74 344

The plaintiff in the above-entitled action, having filed herein its motion for the issuance of a preliminary injunction as prayed for in the complaint and affidavit filed therein,

IT IS HEREBY ORDERED, that said application for preliminary injunction be and the same hereby is set for hearing before the undersigned at the United States District Court for the District of Connecticut at 450 Main Street, Hartford, Connecticut, on the 31st day of Oct. 1974, at 10 o'clock A.M. and that notice of said hearing and the time and place thereof be given to the defendants not less than five (5) days before said hearing, by serving upon each of said defendants a copy of said motion, together with the summons, complaint and affidavits, memorandum of law and a copy of this order, as provided by law.

Dated: October 24 1974.

3:35 P.M.

M. Joseph Blumenfeld

United States District Judge

E

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ST. FRANCIS HOSPITAL,	:	
	:	
Plaintiff,	:	
	:	MOTION FOR PRELIMINARY INJUNCTION
v.	:	
	:	
CONNECTICUT STATE BOARD OF LABOR RELATIONS, DISTRICT 1199 NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, RWDSU, AFL-CIO, and NATIONAL LABOR RELATIONS BOARD,	:	Civil Action No. _____
	:	
Defendants.	:	

Upon the complaint and the attached affidavit of St. Francis Hospital, plaintiff moves the Court for a preliminary injunction as prayed for in the said complaint and on the grounds therein set forth.

And further pursuant to the rules of the Court, plaintiff requests an order for a hearing on this motion.

William M. Cullina

J. Read Murphy
Attorneys for Plaintiff
Murtha, Cullina, Richter and Pinney
P. O. Box 3197 - 101 Pearl Street
Hartford, Connecticut 06103

F

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ST. FRANCIS HOSPITAL, Plaintiff,	:	COMPLAINT
v.	:	
CONNECTICUT STATE BOARD OF LABOR RELATIONS, DISTRICT 1199 NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, RWDSU, AFL-CIO, and NATIONAL LABOR RELATIONS BOARD, Defendants.	:	Civil Action No. _____

Statement of Venue and Jurisdiction

1. This is a civil action involving employer-employee relations at St. Francis Hospital, a non-profit hospital located in Hartford, Connecticut, and involving interpretation and application of the National Labor Relations Act, 29 U.S.C. §151, et seq, as amended by Public Law 93-360.

2. This Court's jurisdiction is invoked pursuant to Title 28 U.S.C. §1332 and §1337, and Title 29 U.S.C. §151.

Identification of the Parties

3. This complaint is brought by St. Francis Hospital, a non-profit hospital, against defendants District 1199 National Union of Hospital and Health Care Employees (the "Union"), a labor organization with offices in New Haven, Connecticut, the Connecticut State Board of Labor Relations (the "State Board"), established under Section 31-102, General Statutes of Connecticut (Rev. 1958), and the National Labor Relations Board ("NLRB"), created pursuant to Sec. 3(a) of the National Labor Relations Act, as amended.

Cause of Action

4. On or about June 17, 1974, defendant Union filed with the State Board petitions for representation of certain employees of plaintiff in three designated units.

5. On July 25, 1974, pursuant to a conference with the Agent of the State Board, plaintiff and defendant Union entered into a consent agreement pursuant to which an election was scheduled to be held on September 11, 1974, to determine whether a majority of the employees described therein wished to be represented by defendant Union for purposes of collective bargaining. A copy of said consent agreement is annexed hereto as plaintiff's Exhibit "A".

6. Said election was to be conducted under the authority and pursuant to the rules, regulations and decisions of defendant State Board.

7. On July 26, 1974, the President signed Public Law 93-360, which amended the National Labor Relations Act by placing non-profit hospitals under the jurisdiction of the National Labor Relations Board for the first time. The aforesaid amendments to the Act became law by their own terms on August 25, 1974. A copy of said law is attached hereto as plaintiff's Exhibit "B".

8. On September 4, 1974, plaintiff filed a motion before defendant State Board asking that the proceedings be dismissed for want of jurisdiction.

9. On September 12, 1974, a hearing was held before defendant State Board at which both plaintiff and defendant appeared through their respective counsel. Decision was reserved.

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10. On October 10, 1974, defendant State Board issued a Direction of Election ordering that an election be conducted by its Agent within thirty days thereafter among the employees described in the agreement for consent election. A copy of said Direction of Election is attached hereto as plaintiff's Exhibit "C".

11. On October 11, 1974, plaintiff mailed petitions to the National Labor Relations Board asking that it assert jurisdiction over the labor questions involved herein and conduct an election according to its own rules and regulations.

12. Defendant NLRB notified plaintiff by letter dated October 16, 1974, that it had docketed said petitions as filed on October 15, 1974, and that a hearing would be conducted before a hearing officer of defendant NLRB on October 31, 1974. A copy of said letter is annexed hereto as plaintiff's Exhibit "D".

13. On October 17, 1974, defendant State Board issued a memorandum of decision purporting to explain the Direction of Election referred to in paragraph 10, supra. A copy of said decision is annexed hereto as plaintiff's Exhibit "E".

14. Pursuant to said Direction of Election, the Agent of defendant State Board has fixed November 6, 1974 as the date of such election.

15. In view of the imminence of the State-ordered election, plaintiff will suffer irreparable damage and has no adequate remedy at law other than to apply to this Court for injunctive relief.

WHEREFORE, plaintiff respectfully prays as follows:

(1) That this Court preliminarily and permanently enjoin defendant Board, its employees, agents and attorneys from holding the election on November 6, 1974, or on any other date, until such time as the National Labor Relations Board has decided whether to assert jurisdiction;

(2) That this Court preliminarily and permanently enjoin defendant Union, its employees, agents and attorneys from proceeding in any way with preparations for the State-ordered election, including but not limited to solicitation of votes, holding of meetings, distribution of campaign literature and posting of notices related to the State Board election until such time as the National Labor Relations Board has acted on the question of jurisdiction;

(3) That this Court request the defendant National Labor Relations Board to render a decision as soon as practicable on whether it will take jurisdiction; and

(4) That the plaintiff have such other and further relief as this Court may deem just and proper.

Dated: Hartford, Connecticut

October 24, 1974

ST. FRANCIS HOSPITAL

By William M. Cullina

William M. Cullina
Its Attorney
Murtha, Cullina, Richter and Pinney
P. O. Box 3197 - 101 Pearl Street
Hartford, Connecticut 06103

Tel: (203) 549-4500

B-1

United States District Court

FOR THE

DISTRICT OF CONNECTICUT

H-74-344

CIVIL ACTION FILE NO. _____

ST. FRANCIS HOSPITAL

Plaintiff

v.

CONNECTICUT STATE BOARD OF LABOR RELATIONS, DISTRICT 1199, NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, RWDSU, AFL-CIO AND NATIONAL LABOR RELATIONS BOARD

Defendant

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon J. Read Murphy Esq. William M. Cullina Esq.

plaintiff's attorney , whose address is: 101 Pearl St. Hartford, Conn. 06103

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Sylvester A. Markowski

Clerk of Court.

A True Copy
Attest:

Clerk

Deputy Clerk.

Date:
Oct. 24, 1974

By: _____
Deputy In Charge.

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

H

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

St. Francis Hospital, Plaintiff, v. Connecticut State Board of Labor Relations, District 1199 National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO, and National Labor Relations Board, Defendants.	:	AFFIDAVIT Civil Action No. _____

William M. Cullina, being duly sworn, deposes and says:

1. I am the attorney for St. Francis Hospital, plaintiff herein, and as such, am fully familiar with the facts of this case. I make this affidavit in support of plaintiff's motion for a preliminary injunction enjoining defendants from proceeding with an election on November 6, 1974, until the National Labor Relations Board (NLRB) has had an opportunity to rule on the question of whether it will assert exclusive jurisdiction over plaintiff in the captioned matter and bar the Connecticut State Board of Labor Relations (State Board) from proceeding further in respect to the same subject matter.

2. Pursuant to the Direction of Election of the defendant State Board dated October 10, 1974 directing that an election be held within thirty days thereafter, the Agent of said State Board has scheduled an election to be held on November 6, 1974 among certain of plaintiff's employees to determine the question of whether the defendant Union may represent such employees for purposes of collective bargaining.

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3. Pursuant to Public Law 93-360 amending the National Labor Relations Act effective August 25, 1974, on October 11, 1974 I mailed to the National Labor Relations Board on behalf of plaintiff RM-Representation Employer Petitions concerning the claims of the defendant Union to be recognized as the representative of the employees involved in the proceedings before the State Board.

4. On or about October 18, 1974, plaintiff received letters from the Regional Director of Region 1 of the NLRB at Boston notifying plaintiff that its Petitions had been filed and docketed on October 15, 1974 and further notifying plaintiff that a hearing is scheduled to be conducted on October 31, 1974 before a hearing officer of the NLRB on the question of representation raised by such Petitions.

5. On information and belief, the National Labor Relations Board in Washirgton is expected to issue at any time in the near future a decision on the jurisdictional questions raised by the plaintiff's Petitions, whereupon the Regional Director of the NLRB will then act upon plaintiff's Petitions in accordance with the directions of the National Labor Relations Board in Washington.

6. Attached hereto as Exhibit A is an Advisory Opinion dated October 16, 1974 by the National Labor Relations Board in Washington stating that it would assert jurisdiction over the Yale-New Haven Hospital pursuant to Public Law 93-360 and its jurisdictional standards with respect to the subject matter of a petition for representation filed by the defendant Union herein with the State Board, in which proceeding the State Board on

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August 23, 1974 issued a Direction of Election directing that an election be held within thirty days thereafter.

7. The pending election scheduled by the defendant State Board to be held on November 6, 1974 would be conducted in accordance with the rules and regulations of that Board. State election proceedings and determinations differ in material respects from those of the NLRB, including but not limited to the criteria for determining bargaining units, eligibility of voters and status of supervisors.

8. In the event the State election were to take place as scheduled and the NLRB subsequently asserted exclusive jurisdiction, it is probable that the entire State Board proceeding would be nullified and set aside, at cost to both parties of substantial time and expense and further exacerbation of employer-employee relationships already strained by the prior proceedings conducted under the supervision of the defendant State Board.

William M. Cullina

Subscribed and sworn to before
me, this 24th day of October, 1974.

Notary Public

MY COMMISSION EXPIRES MARCH 31, 1977

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Exhibit A

MFJKP

214 NLRB NO. 34

D--9185
New Haven, Conn.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

YALE-NEW HAVEN HOSPITAL

and

Case AO--159

LOCAL 1199, NATIONAL UNION OF
HOSPITAL AND HEALTH CARE EMPLOYEES,
R.W.D.S.U., AFL--CIO

ADVISORY OPINION

This petition for an Advisory Opinion was filed on August 28, 2974, by Yale-New Haven Hospital, hereafter Petitioner, pursuant to Sections 102.98 and 102.99 of the Board's Rules and Regulations, Series 8, as amended, for a determination whether the Board would assert jurisdiction over its operation.

In pertinent part, Petitioner alleges:

1. There is pending before the Connecticut State Board of Labor Relations, hereafter the State Board, a petition docketed as Case E--2775, by Local 1199, National Union of Hospital and Health Care Employees, R.W.D.S.U., AFL--CIO, hereafter the Union, wherein it seeks to represent certain of Petitioner's employees. The State Board issued a decision (No. 1245) on August 23, 1974, directing that an election be conducted among the above-mentioned employees within 30 days.

2. Petitioner is a nonprofit hospital which provides care to sick and infirm persons. Its gross annual revenues for the fiscal year 1973--74, a period representative of its operations, exceeded $60 million. During the same period,

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it purchased and received drugs and other supplies from sources outside the State of Connecticut valued in excess of $50,000.

3. The State Board has made no findings with respect to the aforementioned commerce data.

4. No unfair labor practice proceeding involving this same labor dispute is pending before the Board.

5. The Union has filed a response to the petition and a memorandum of law in which it concedes that Yale-New Haven Hospital meets the jurisdictional standards set by the National Labor Relations Board. It contends, however, that, since the question of appropriate unit has already been litigated and decided by the State Board, it would be inequitable to require relitigation of that issue before the Board and urges that we dismiss this petition as raising issues inappropriate for advisory relief or, alternatively, rule that the State Labor Board shall have jurisdiction to complete the representational matter pending before it.

On the basis of the foregoing, the Board is of the opinion that:

1. Petitioner is a nonprofit hospital devoted to the care of sick and infirm persons.

2. Recent amendments to the National Labor Relations Act[1/] extended the Board's jurisdiction to nonprofit hospitals. The Board has previously asserted jurisdiction over proprietary hospitals which come within its statutory

1/ P.L. 93--360, effective August 25, 1974.

jurisdiction and have an annual gross volume of $250,000.[2] Inasmuch as the Employer here meets our basic jurisdictional standard, and does a gross volume of approximately $60 million which meets any of our existing monetary standards, we conclude that the Board would assert jurisdiction herein. We leave to subsequent adjudication the determination of the precise monetary standard to be applied to nonprofit hospitals.[3]

We do not reach nor pass on the contentions raised by the Union inasmuch as an advisory opinion is primarily for determining whether an employer's operations in commerce meet the Board's discretionary jurisdictional standards.[4] The question of appropriate unit and the extent to which State Board determinations will be honored are substantive matters not resolvable in this proceeding.[5]

Petitioner, having a total annual gross volume of $60 million, and having engaged in interstate commerce so as to fall within our statutory jurisdiction, clearly falls within any of the Board's discretionary jurisdictional standards.

Accordingly, the parties are advised, under Section 102.103 of the Board's Rules and Regulations, that on the allegations herein presented, the Board would

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2/ Butte Medical Properties, d/b/a Medical Center Hospital, 168 NLRB 266 (1967).
3/ Cf., Cornell [illegible], 183 NLRB 329, 334 (1970).
4/ Globe Security Systems, Inc., 209 NLRB No. 18 (1974); The Children's Village, Inc., 180 NLRB 1044 (1970).
5/ Sec. 101.40(e) of the Board's Statements of Procedure, Series 8, as amended.

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assert jurisdiction over the operations of the Petitioner with respect to labor disputes cognizable under Sections 8, 9, and 10 of the Act.

Dated, Washington, D.C. OCT 16 1974

Edward B. Miller, Chairman

John H. Fanning, Member

Howard Jenkins, Jr., Member

Ralph E. Kennedy, Member

John A. Penello, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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E

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

St. Francis Hospital,	
Plaintiff,	
v.	AFFIDAVIT
Connecticut State Board of Labor Relations, District 1199 National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO and National Labor Relations Board,	Civil Action No. _____
Defendants.	

STATE OF CONNECTICUT :
: ss. Hartford October 24, 1974
COUNTY OF HARTFORD :

Sister Francis Marie, being duly sworn, deposes and says:

1. I am Executive Director of St. Francis Hospital, plaintiff herein. This affidavit is respectfully submitted in support of plaintiff's motion for a preliminary injunction enjoining defendant State Board and defendant Union from taking any action in furtherance of a representation election among certain of plaintiff's employees directed by defendant State Board to be held by its Agent on November 6, 1974, until such time as the National Labor Relations Board shall decide whether to assert jurisdiction in said election.

2. On July 25, 1974, I signed an agreement for consent election providing for an election to be held on September 11, 1974 by defendant State Board by secret ballot to determine whether a majority of plaintiff's employees in the unit designated therein wished to be represented by defendant Union for purposes of collective bargaining.

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3. On July 26, 1974, the President of the United States signed Public Law 93-360, to become effective on August 25, 1974, which Public Law amended the National Labor Relations Act by terminating the previously existing exemption for non-profit hospitals and placing such hospitals, including plaintiff, under the jurisdiction of the National Labor Relations Board.

4. After the enactment into law of said amendments, there followed a series of legal proceedings between plaintiff and defendants, which proceedings are more fully described in the complaint and the accompanying affidavit of William M. Cullina, plaintiff's attorney, and the memorandum of decision of the State of Connecticut Board of Labor Relations dated October 17, 1974, all of which are incorporated by reference herein.

5. The action of the State Board in directing an election scheduled to be held on November 6, 1974, notwithstanding the enactment of Public Law 93-360, has caused, and unless enjoined will cause, substantial turmoil, disruption and unrest among plaintiff's employees, including but not limited to feelings of suspicion, recrimination and mistrust, lost working hours and interference with previously sound relationships between plaintiff and its employees, and among such employees inter sese.

6. On October 11, 1974, plaintiff duly filed petitions with the National Labor Relations Board, requesting that the Federal Board assert its jurisdiction over plaintiff in respect of the subject matter of the pending election.

7. Defendant Union has been and is presently engaging in various activities in preparation for the November 6, 1974 election, including but not limited to the printing and

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distribution of campaign literature, the holding of meetings, the posting of notices setting forth the mechanics of the forthcoming election, solicitation by union campaign organizers, and other election-related activities.

6. Unless defendant Union is enjoined and restrained from such activities as are set forth in Paragraph 7, supra, plaintiff will suffer great and irreparable damage, in that plaintiff will be forced to expend its time, efforts and monies in preparation for an election which may be declared null and void and the already strained relationships between plaintiff and its employees, and among such employees inter sese, will be further strained and damaged.

Sister Francis Marie
Sister Francis Marie

Subscribed and sworn to before
me this 24th day of October, 1974.

Notary Public

My commission expires

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ST. FRANCIS HOSPITAL, Plaintiff, v. CONNECTICUT STATE BOARD OF LABOR RELATIONS DISTRICT 1199 NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, RWDSU, AFL-CIO, and NATIONAL LABOR RELATIONS BOARD, Defendants.	:	Civil Action No. H74/344

MEMORANDUM OF THE NATIONAL LABOR RELATIONS BOARD IN SUPPORT OF THE PLAINTIFF'S REQUEST THAT THE CONNECTICUT STATE BOARD OF LABOR RELATIONS BE ENJOINED FROM CONDUCTING AN ELECTION AMONG THE PLAINTIFF'S EMPLOYEES UNTIL THE NATIONAL LABOR RELATIONS BOARD DECIDES WHETHER TO EXERCISE ITS STATUTORY JURISDICTION AND IN OPPOSITION TO OTHER INJUNCTIVE RELIEF REQUESTED

Preemption operates to forestall conflicting regulation of conduct by various official authorities which may have jurisdiction of the matter. Moreover, the absence of differing statutory or regulatory schemes does not negate potential conflicts; rather conflicts may arise equally from the techniques employed in administering similar laws or rights. Motor Coach v. Lockridge, 403 U.S. 274, 285-287 (1971).

In devising a uniform federal labor policy the preemption rationale was employed to place such policy in the hands of one expert agency -- the National Labor Relations Board. A state agency's attempt to adjudicate a dispute within the Board's jurisdiction runs afoul of this policy, even if the agency purports to apply the same Board rules or policies and accordingly is prohibited from acting under the preemption rationale.

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The test whether a state activity falls within the preemption doctrine was defined by the Supreme Court in San Diego Building Trades Council et al v. Garmon, 359 U.S. 236 (1959) as follows:

> "When it is clear or may fairly be assumed that the activities which a state purports to regulate are protected by . . . the National Labor Relations Act . . . due regard for the (Board's authority) requires that state jurisdiction must yield."

Public law 93-360, effective August 25, 1974, amended the National Labor Relations Act to include non-profit hospitals within the definition of an "Employer." Thus, employees of such hospitals now enjoy the rights guaranteed by Section 7 of the Act. One of the rights expressly afforded employees by Section 7 is the right to select a representative for the purpose of collective bargaining. 29 U.S.C. §151 et seq. Moreover, under Section 9 of the Act (29 U.S.C. 159) the Board is invested with exclusive authority to resolve representation matters including, inter alia, determination of appropriate bargaining units, conduct of elections and otherwise assuring employees the full freedom to exercise their Section 7 rights to select or reject a bargaining representative. Since the passage of Public Law 93-360 the operation of Section 9 of the National Labor Relations Act is also applicable to non-profit hospital employees. Undoubtedly, the order of the Connecticut State Board of Labor Relations requiring an election among the plaintiff's employees affects these rights. For the National Labor Relations Board is the exclusive agency chosen by Congress to interpret and enforce these rights; the Connecticut Board's conduct of an election usurps this function by attempting to resolve the question of representation by employing its own processes and techniques. This is particularly evident in this case where a representation petition involving the same employees is now pending and is being processed before the National Labor Relations Board. Under the principles set out above

the state Board's action is thereby preempted. Accordingly, the election ordered by the Connecticut State Board must be enjoined. For "[t]o leave the states free to regulate conduct so plainly within the central aim of federal regulation involves too great a danger of conflict between power asserted by Congress and requirements imposed by state law" San Diego Bldg. Trades Council v. Garmon, supra, 359 U.S. at 244.

The Board opposes that portion of plaintiffs motion which requests the Court to enjoin the Union from conducting campaign activities. The Board's exclusive authority under Section 9 of the Act (29 U.S.C. 159) to conduct representation matters necessarily entails regulation of what campaign activity may be permitted or prohibited during an election campaign. Similarly Section 7 and of the Act (29 U.S.C. 157) guarantees employees the right to undertake activities in support of a union; Section 8 of the Act (29 U.S.C. 158) prohibits certain conduct undertaken by labor organizations that may occur in the context of an organizational campaign. Accordingly since the Union's campaign activities which are sought to be enjoined clearly fall within the purview of the Board in administering various sections of the Act this Court lacks jurisdiction to regulate the Union's conduct. See e.g. A.F.L. v. N.L.R.B., 308 U.S. 401 (1940); Meyers v. Bethlehem Steel Co. 303 U.S. 41 (1938).

Respectfully submitted,

Elliott Moore
Deputy Associate General Counsel
National Labor Relations Board

H

Dated at Washington, D.C.

this 30th day of October, 1974.

By _____

ABIGAIL COOLEY, Assistant General
Counsel for Special Litigation
1717 Pennsylvania Ave., N.W.
Washington, D.C. 20570
Telephone: (202) 254-9221

Co-counsel: Robert Dashiell (Ext. 9314)

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ST. FRANCIS HOSPITAL,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. H74/344
	:	
CONNECTICUT STATE BOARD OF LABOR RELATIONS, DISTRICT 1199 NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, RWDSU, AFL-CIO, and NATIONAL LABOR RELATIONS BOARD,	:	
	:	
Defendants.	:	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Board's memorandum, in the above-captioned case, has this day been served by hand delivery upon counsel for the plaintiff.

Respectfully submitted,

Elliott Moore
Deputy Associate General Counsel
National Labor Relations Board

Dated at Washington, D.C.

this 30th day of October, 1974.

By Abigail Cooley (RSF)

ABIGAIL COOLEY, Assistant General
Counsel for Special Litigation
1717 Pennsylvania Ave., N.W.
Washington, D.C. 20570
Telephone: (202) 254-9221

Co-counsel: Robert Dashiell (Ext. 9314)

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ST. FRANCIS HOSPITAL, Plaintiff, v. CONNECTICUT STATE BOARD OF LABOR RELATIONS, DISTRICT 1199 NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, RWDSU, AFL-CIO, and NATIONAL LABOR RELATIONS BOARD, Defendants.	:	STIPULATION Civil Action No. H-74-344

IT IS HEREBY STIPULATED AND AGREED by and between attorneys for the respective parties hereto that the following facts are not in dispute (each party reserving the right to object to the materiality of such stipulated fact and its relevance to the issues):

1. Plaintiff St. Francis Hospital is a non-profit hospital located in Hartford, Connecticut and by virtue of Public Law 93-360, said hospital is now and has been since August 25, 1974 within the jurisdiction of the National Labor Relations Board.

2. Defendant District 1199 is a labor union with a local office in New Haven, Connecticut.

3. Defendant State Board of Labor Relations is a state administrative agency established pursuant to Connecticut law with its office at Wethersfield, Connecticut.

4. Defendant National Labor Relations Board is a federal administrative agency headquartered in Washington, D. C. with a local Regional Office in Boston, Massachusetts.

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5. On or about June 17, 1974, defendant Union filed with defendant State Board petitions for representation of certain of plaintiff's employees for purposes of collective bargaining.

6. On July 25, 1974, plaintiff and defendant Union entered into an agreement consenting to a representation election to be held on September 11, 1974.

7. On July 26, 1974, former President Nixon signed Public Law 93-360, which, inter alia, amended the National Labor Relations Act by placing non-profit hospitals under the jurisdiction of the National Labor Relations Board. Said amendments became effective on August 25, 1974.

8. On September 4, 1974, plaintiff filed a motion before defendant State Board asking that the proceeding involving plaintiff and defendant Union as set forth in paragraphs 5 and 6, supra, be dismissed for want of jurisdiction.

9. On October 10, 1974, after hearing, defendant State Board denied plaintiff's motion to dismiss and issued a Direction of Election.

10. On October 11, 1974, plaintiff mailed petitions to defendant National Labor Relations Board asking that it assert jurisdiction over the subject matter of these proceedings. Said petitions were docketed as filed and a hearing was scheduled before a National Labor Relations Board hearing officer on October 31, 1974.

11. On October 17, 1974, defendant State Board issued a Memorandum of Decision explaining its Direction of Election of October 10, 1974.

12. On October 25, 1974, defendant State Board's Agent confirmed that the election previously ordered would be held on November 6, 1974.

IT IS FURTHER STIPULATED AND AGREED that copies of the following documents may be received in evidence as plaintiff's exhibits for purposes of this hearing:

Exhibit No.	Description
A	Agreement for Consent Election between plaintiff and defendant Union
B	Direction of Election of Defendant State Board
C	Plaintiff's petitions to defendant NLRB
D	NLRB letters acknowledging plaintiff's petitions
E	Defendant State Board Memorandum of Decision
F	Defendant State Board letter fixing November 6, 1974 as date of election.

Dated: Hartford, Connecticut
October , 1974

By: _____
William M. Cullina
Attorney for Plaintiff

By: _____
John A. Arcudi
Attorney for defendant Union

By: _____
Attorney for defendant State Board

By: _____
Attorney for defendant National Labor Relations Board

So Ordered:

_____
U. S. D. J.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ST. FRANCIS HOSPITAL	:	
v.	:	
CONNECTICUT STATE BOARD OF LABOR RELATIONS, DISTRICT 1199 NATIONAL UNION OF HOSPITAL AND HEALTH CARE EMPLOYEES, RWDSU, AFL-CIO, and NATIONAL LABOR RELATIONS BOARD	:	CIVIL NO. H-74-344

MEMORANDUM OF DECISION ON PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

Plaintiff, a non-profit hospital, is seeking to enjoin the defendant Connecticut State Board of Labor ("State Board") from conducting an election on November 6, 1974 among 250 of the plaintiff's service employees to determine if they wish to be represented by the defendant Union, District 1199 of the National Union of Hospital and Health Care Employees.[1/] This action is currently before this Court on plaintiff's motion for a preliminary injunction.[2/] The question presented

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1/ In its complaint the plaintiff also includes a prayer for an injunction against the defendant Union to prevent it from engaging in any campaign activity in preparation for the election. However, at the hearing on its motion, the plaintiff withdrew that request. Thus, this Court need only consider the prayer for an injunction against the defendant State Board.

2/ The defendant Union has challenged the jurisdiction of this Court to hear this case. There is no merit to this claim, as jurisdiction is clearly present under 28 U.S.C. § 1337 (1970). Capital Service v. N.L.R.B., 347 U.S. 501 (1954); American

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by this conflict between the union and the employer is what administrative body shall have the power to regulate matters of dispute between them.

The facts of this case are straightforward. On July 25, 1974, plaintiff and the defendant Union entered into a stipulation pursuant to which the Connecticut State Board of Labor scheduled an election to be held on September 11, 1974 to determine whether a majority of the employees in the agreed upon bargaining unit wanted to be represen[illegible]e defendant union. At the time that stipulation was en[illegible]ed into, the Connecticut State Board of Labor clearly had jurisdiction over non-profit hospitals in that the National Labor Relations Act specifically excluded from its coverage "any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual . . ." 29 U.S.C. § 152(2) (1970). Thus, on July 25, 1974, there was no problem involved in the State Board's assumption of jurisdiction over the plaintiff hospital.

However, on the very next day after the stipulation was entered into, President Nixon signed into law the Act of

2/ cont'd

Federation of Labor v. Watson, 327 U.S. 582 (1946); Chemical and Atomic Workers Int'l Union v. Arkansas Louisiana Gas Co., 332 F.2d 64 (10th Cir. 1964). Nor do the provisions of the Norris-LaGuardia Act, 29 U.S.C. §§ 101-115 (1970) act to bar the granting of injunctive relief against the defendant State Board. Cf. La Crosse Telephone Corp. v. Wisconsin Employment Relations Board, 336 U.S. 18 (1949); Bethlehem Steel Co. v. New York State Labor Relations Board, 330 U.S. 767 (1947).

July 26, 1974, Pub. L. No. 93-360, 88 Stat. 395 which extended the coverage and protection of the National Labor Relations Act to the employees of non-profit hospitals. The law became effective on August 25, 1974. This operated to exclude state boards of labor from their former jurisdiction over labor disputes at non-profit hospitals. La Crosse Telephone Corp. v. Wisconsin Employment Relations Board, 336 U.S. 18 (1949); Bethlehem Steel Co. v. New York State Labor Relations Board, 330 U.S. 767 (1947). Cf. Garner v. Teamsters Local No. 776, 346 U.S. 485 (1953).

In view of the overlap in authority over this dispute by two regulatory governmental agencies, the plaintiff filed a motion with the defendant State Board on September 4, 1974 asking that all proceedings before that Board be dismissed for want of jurisdiction. On October 10, 1974, the State Board ruled against the plaintiff and issued an order that the election be held within the next 30 days. As mentioned above, that election is now scheduled for November 6. On October 17, 1974, the State Board issued a memorandum of decision, In the Matter of St. Francis Hospital, Decision No. 1252-A (Oct. 17, 1974), explaining its earlier ruling. The substance of that ruling shall be discussed infra.

On October 11, 1974, the plaintiff filed a petition with the National Labor Relations Board ("N.L.R.B.") asking that it assume jurisdiction over the labor matters involved in the state proceedings and conduct an election in accordance

with its rules and regulations, which the plaintiff alleges are substantially different from those which govern state-conducted elections. The petition was docketed on October 15, 1974, and set down for a hearing on October 31, 1974. However, upon the filing of the instant action that hearing was postponed pending the action of this Court.

Alleging probable irreparable injury and a likelihood of success on the merits, plaintiff now essentially asks this Court to enjoin the State Board from conducting the scheduled election pending a decision from the N.L.R.B. as to whether it will assume jurisdiction over this matter. Having had an opportunity to consider the merits of plaintiff's petition, this Court agrees that a preliminary injunction should issue.

There is no doubt that Pub. L. No. 93-360 has effectively divested the State Board of jurisdiction over any labor dispute involving non-profit hospitals occurring subsequent to August 25, 1974. La Crosse Telephone Corp. v. Wisconsin Employment Relations Board, supra; Lethlehem Steel Co. v. New York State Labor Relations Board, supra; Garner v. Teamsters Local No. 776, supra. In fact, in its memorandum of October 17, the State Board stated:

> "There is no question about federal pre-emption in this case. The Hospital will clearly fall within federal jurisdiction so far as all disputes arising after August 25th are concerned. The problem here is presented by the transitional nature of the present dispute and the lack of any clear indication of what NLRB will do about matters pending before State agencies which had

> undoubted jurisdiction when proceedings were instituted. This Board has written NLRB for guidance in the matter and has received an equivocal reply as to pending election proceedings." In the Matter of St. Francis Hospital, supra at 2 (footnote omitted).

The State Board thus seemed to feel that although the N.L.R.B. now has jurisdiction over labor-management disputes at the plaintiff hospital, it is unclear whether it will accept the results of elections conducted under State Board auspices. The ambiguity was based upon a letter from the N.L.R.B. responding to an inquiry from the State Board regarding this matter. As set out in the State Board's opinion, the N.L.R.B.'s letter stated: "[T]he NLRB's policy has been to recognize the validity of State-conducted elections and certification where the election procedure was free of irregularities and reflected the true desires of the employees. There, too, however, each case raising such issues before the NLRB will have to be considered on its own facts viewed in light of the newly expressed intent of Congress." In the Matter of St. Francis Hospital, supra at 2. What is clear from this letter is that the N.L.R.B. views itself as having jurisdiction over all labor matters concerning non-profit hospitals; any decision to accept the results of a state-conducted election would be based upon a determination that the election was not at variance with national labor policy, not because the N.L.R.B. viewed the State election as binding upon it. The letter provides no support for the position that the State Board can or should retain jurisdiction.

This conclusion is further supported by the brief submitted in this action by the N.L.R.B., a nominal defendant. Although not determinative of the issues in the case, the views of the N.L.R.B. are entitled to great weight. Cf. Trafficante v. Metropolitan Life Ins., 409 U.S. 205 (1972); American Airlines, Inc. v. Remis Industries, Inc., No. 73-1960 (2d Cir. March 15, 1974); Philbeck v. Timmers Chevrolet, Inc., 499 F.2d 971, 976-977 (5th Cir. 1974); Johnson v. Harder, Civ. No. 13,765 (D. Conn. October 11, 1974). In their brief, the N.L.R.B. stated in support of the plaintiff's motion:

> "Since the passage of Public Law 93-360 the operation of Section 9 of the National Labor Relations Act is also applicable to non-profit hospital employees. Undoubtedly, the order of the Connecticut State Board of Labor Relations requiring an election among the plaintiff's employees affects these rights. For the National Labor Relations Board is the exclusive agency chosen by Congress to interpret and enforce these rights; the Connecticut Board's conduct of an election usurps this function by attempting to resolve the question of representation by employing its own processes and techniques. This is particularly evident in this case where a representation petition involving the same employees is now pending and is being processed before the National Labor Relations Board. Under the principles set out above the state Board's action is thereby preempted. Accordingly, the election ordered by the Connecticut State Board must be enjoined. For '[t]o leave the states free to regulate conduct so plainly within the central aim of federal regulation involves too great a danger of conflict between

> power asserted by Congress and requirements imposed by state law' San Diego Bldg. Trades Council v. Garmon, [359 U.S. 236, 244 (1959)]." Brief of the N.L.R.B. 2-3. 3/

In addition to the equivocal response from the N.L.R.B., the State Board relied upon the decisions of Judge Cannella in Methodist Hospital of Brooklyn, N.Y. v. New York State Labor Relations Board, 74 Civ. 3754 (S.D. N.Y. Sept. 10, 1974) and Judge Weinstein in The Swedish Hospital in Brooklyn v. New York State Labor Relations Board, 74 Civ. 1267 (E.D. N.Y. Sept. 4, 1974) denying injunctive relief under circumstances similar in some respects. These cases are clearly distinguishable from the instant case and to the extent that they are not I decline to follow them.

In Methodist Hospital the New York State Board had already conducted an election well before August 25 and was engaged in holding post election hearings leading up to the certification of the victorious Union. In the instant case

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3/ Of less importance in the Court's deliberations, but still of some interest, is a memorandum dated August 21, 1974 issued to members of the National Association of State Labor Relations Agencies (of which the State Board is a member) by its president and secretary-treasurer. The memorandum outlines to the members the recommendations of the organization regarding the appropriate action to be taken on pending matters involving non-profit hospitals after August 25. In regard to the precise issue before this Court, the memorandum states: "In representation cases, ordinarily if no election has as yet been held it is probably desirable to grant any motion which may be made to dismiss on jurisdictional grounds, because a petition can be filed with the National Board." Plaintiff's Exhibit G

no election has yet been held. In addition, plaintiff in that case had not yet filed a petition for an advisory opinion with the N.L.R.B. regarding whether it would assume jurisdiction over the dispute in issue. In this case, petitioner has taken even further action by petitioning the N.L.R.B. to assume jurisdiction over the dispute. As indicated above, no decision has yet been rendered on that petition.

The factual setting of Swedish Hospital is closer to that involved here. In that case Judge Weinstein declined to enjoin the conducting of an election that had been ordered prior to August 25 but which was to be held in September. However, in ruling from the bench, the court reportedly noted there that "it is open to the hospital at any time to commence a proceeding before the N.L.R.B. and the N.L.R.B. may step in and give more protection to the hospital, if necessary." Plaintiff's brief at 7. That is exactly what the plaintiff has done here; they merely seek this Court's assistance in providing the N.L.R.B. with the time necessary to render a decision on their petition. Significantly, as discussed above, the N.L.R.B. joins in the plaintiff's request.[4/]

4/ There is little doubt that the N.L.R.B. will assume jurisdiction over the labor disputes at the plaintiff hospital once it has had an opportunity to review the plaintiff's petition. In an advisory opinion, Yale-New Haven Hospital, 214 N.L.R.B. No. 34 (Oct. 16, 1974) the Board did state that upon request it would assume jurisdiction over labor disputes at that facility because the hospital clearly surpassed the Board's minimum jurisdictional standard of $250,000 annual gross revenue. At the hearing on plaintiff's motion, it was established that St. Francis Hospital has an annual gross revenue of approximately $38 million.

After reviewing these factors, the State Board still noted that the "question is by no means free from doubt." In the Matter of St. Francis Hospital, supra at 3. In that posture of uncertainty they viewed as decisive the fact that the plaintiff had entered into the stipulation on July 25 with full knowledge that the N.L.R.B. was likely to be given jurisdiction over non-profit hospitals in the near future. Again the Board noted that it is not clear whether consent in this context could preclude the consenter from subsequently objecting to jurisdiction. However, this doubt compounded with its others led the State Board to retain jurisdiction. This Court, however, does not find the consent issue quite so troublesome. One of the chief purposes of the National Labor Relations Act is to achieve a uniform national labor policy. Motor Coach Employees of America v. Lockridge, 403 U.S. 274 (1971); San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959). It is unlikely that such a policy would be served by permitting parties by stipulation to confer jurisdiction upon a state labor relations board.

Furthermore, the Act provides at 29 U.S.C. §§ 160(a) and 164(c)(2) (1970) for the exclusive ways in which state agencies may assume jurisdiction over matters that properly fall within the jurisdiction of the N.L.R.B. They are either by formal cession of such jurisdiction to the state agency by the N.L.R.B., Guss v. Utah Labor Relations Board, 353 U.S. 1 (1957); Amalgamated Meat Cutters Local No. 427 v. Fairlawn

Meats, 353 U.S. 20 (1957) or formal declination of jurisdiction by the N.L.R.B. Neither has occurred here. It is quite clear that the supremacy of federal labor law cannot be undercut by the action of private parties. Consent by the parties given at a time when the State Board could assume jurisdiction cannot have the effect of permitting the State Board to retain jurisdiction once its jurisdiction has been divested by operation of federal law.[5/]

5/ From the standpoint of the parties, the most important aspect of the July 25 stipulation was the scope of bargaining unit agreed to. The November 6 election would cover 250 employees in the dietary, housekeeping and laundry departments out of a total 2200 employees in the hospital. Apparently the State Board has favored such small units and in recognition of that, the plaintiff hospital acceded to the Union's request for a unit of that size. However, the N.L.R.B. in cases dealing with proprietary hospitals and nursing homes, over which it has had jurisdiction for several years, has apparently favored hospital-wide units. It is quite clear that the defendant Union views a smaller unit as being preferable, whereas the plaintiff prefers the larger unit for the apparent reason that it would be less subject to numerous work stoppages. That this is the crux of the dispute, rather than the issue of under whose jurisdiction the election is conducted, is highlighted by the fact that on September 11 the Union offered to agree to the plaintiff's motion to dismiss the proceedings before the State Board if the plaintiff agreed to carry over its stipulation as to the bargaining unit into the N.L.R.B. proceedings. The plaintiff rejected the offer.

The defendant may not, however, suffer from the change of jurisdiction even on this score. The N.L.R.B. has provided at 29 C.F.R. § 101.19 (a)(1) (1974) for parties to enter into consent election agreements, including agreement as to appropriate bargaining units. It is possible that the N.L.R.B. will decide to honor the agreement entered into by the plaintiff and the defendant Union.

On the other hand, it was noted by counsel for the N.L.R.B. at the hearing on this motion, and confirmed by counsel for the Union, that the N.L.R.B. never abdicates its responsibility

This Court is thus of the opinion that the plaintiff is almost certain to succeed on the merits. Of course, to justify the granting of a preliminary injunction the plaintiff must also demonstrate possible irreparable injury. The plaintiff has successfully carried that burden in this case as well. It is evident that the Union campaign underway at the plaintiff's facilities is costly to the plaintiff. It has had to divert 30 of its employees to counter the Union's campaigning efforts. More significantly, the assistant administrator in charge of personnel in the hospital testified that the campaign has created a high level of tension among all personnel, not only those affected by the upcoming election. As a result, the care of patients has suffered. Additionally, it is evident that personnel relationships could be permanently strained if this election were held, the Union were certified by the State and then the N.L.R.B. invalidated the results. Understandably, the jurisdictional squabble which could lead to such a result would be ill understood by the employees involved and could lead to deep feelings of bitterness. Finally, if the Union were to win the election,

5/ cont'd

of determining the appropriateness of requested bargaining units under federal standards; that is, it may choose to ignore such a consent agreement. When considered in that light it is apparent that the N.L.R.B. would not necessarily be more likely to certify the unit in question if the election of November 6 were to be held than it would if confronted with the stipulation of July 25 alone. Thus, it is unclear how the defendant Union would be injured by the granting of an injunction in this case.

the plaintiff would inevitably become involved in a series of post-election hearings and procedures, all of which would consume considerable time. As it is apparent that the N.L.R.B. is the body with the proper jurisdiction over this matter, it is best to avoid all of these consequences by issuing an appropriate order at this time.

In addition, this Court takes into account not only the private interests involved in this action, but also the interests of the public. "The qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims." The Hecht Co. v. Bowles, 321 U.S. 321, 329-330 (1944). The public interest in securing a uniform national labor policy in regard to non-profit hospitals would be ill-served by allowing the State Board to continue to exercise jurisdiction over this matter while the plaintiff's petition is still pending before the N.L.R.B.

Accordingly, the defendant State Board of Labor Relations is preliminarily enjoined from conducting any representational elections among employees at the St. Francis Hospital, while the plaintiff's petition is pending before the N.L.R.B. Should the N.L.R.B. decline jurisdiction over the labor disputes at the plaintiff's facilities, the defendants may apply to this Court for a dissolution of this injunction.

The plaintiff shall post bond in the amount of $10,000 to secure the defendant Union against future campaign costs which it may incur should the N.L.R.B. decline jurisdiction and should an election under the State Board jurisdiction then be conducted.

SO ORDERED.

Dated at Hartford, Connecticut, this 1st day of November, 1974.

M. Joseph Blumenfeld
United States District Judge